

**ASSEMBLY BILL**

**No. 1325**

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**Introduced by Assembly Member Salas**

February 27, 2015

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An act to add Chapter 7.1 (commencing with Section 1710) to Division 2 of the Fish and Game Code, relating to the Delta smelt, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1325, as introduced, Salas. Delta smelt.

Existing law requires the Fish and Game Commission to establish fish hatcheries for the purposes of stocking the waters of California with fish, and requires the Department of Fish and Wildlife to maintain and operate those hatcheries.

This bill would enact the Delta Smelt Preservation and Restoration Act of 2016. The act would require the department to develop a Delta smelt hatchery program to preserve and restore the Delta smelt. The bill would require the department to enter into mitigation banking agreements with banking partners for the purpose of providing take authorizations to banking partners and to obtain funding from banking agreements.

The bill would appropriate an unspecified amount of money from an unspecified source to the department for purposes of implementing the bill's provisions.

Vote: majority. Appropriation: yes. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. The Legislature finds and declares all of the  
2 following:

3     (a) The Delta smelt (*Hypomesus transpacificus*) is a small fish  
4 native to the Sacramento-San Joaquin Delta. The Delta smelt is a  
5 particularly vulnerable species in the Delta, with a typical lifespan  
6 of a single year. It has an unusually low fecundity for a fish with  
7 a limited planktonic larvae diet. It resides primarily within the  
8 interface between the salt and fresh water.

9     (b) In 1993, the Delta smelt was listed as threatened and has  
10 henceforth been protected under state law pursuant to the California  
11 Endangered Species Act.

12     (c) There are many known threats to the smelt in the Delta. Loss  
13 of habitat, reduced food supply, invasive species, rising  
14 temperatures, and toxic contaminants have all been identified as  
15 playing a potential role in the decline of Delta smelt.

16     (d) It is critical to move forward with the appropriate  
17 comprehensive strategy for a sustainable Delta that includes the  
18 investments necessary to allow the Delta smelt and other sensitive  
19 species to survive and thrive in their native habitat. This goal must  
20 be accomplished in a manner that will also provide sufficient and  
21 reliable water supplies to meet the public health and safety needs  
22 of Californians throughout the state and support California's vital  
23 economic interests.

24     (e) A long-term comprehensive solution is vital to addressing  
25 the myriad of issues affecting ecosystem health and species  
26 recovery. However, immediate action is needed to address the  
27 critical condition of the Delta smelt population. A Delta smelt  
28 hatchery is a single element in what should constitute a suit of  
29 actions aimed at improving habitat conditions and species recovery.  
30 A Delta smelt hatchery can provide near-term benefits to ensure  
31 the survival of this key Delta species.

32     SEC. 2. Chapter 7.1 (commencing with Section 1710) is added  
33 to Division 2 of the Fish and Game Code, to read:

1 CHAPTER 7.1. DELTA SMELT PRESERVATION AND RESTORATION  
2 ACT  
3

4 1710. This chapter shall be known, and may be cited, as the  
5 Delta Smelt Preservation and Restoration Act of 2016.

6 1711. As used in this chapter:

7 (a) "Banking partner" means any state, federal, or local public  
8 agency, or person, that enters into a written agreement with the  
9 department to participate in the Delta Smelt Hatchery Program.

10 (b) "Delta" means the Sacramento-San Joaquin Delta as  
11 described in Section 12220 of the Water Code.

12 (c) "Delta smelt" means the Delta smelt (*Hypomesus*  
13 *transpacificus*) of the family Osmeridae.

14 (d) "Mitigation bank" means a publicly or privately owned and  
15 operated fish hatchery in which Delta smelt are spawned and reared  
16 for the purpose of creating refugia populations or for release into  
17 the delta to increase the population of Delta smelt in the delta or  
18 for use as stock for scientific studies, and which is constructed  
19 consistent with this chapter to mitigate the adverse impacts on  
20 Delta smelt populations caused by the activities of banking  
21 partners.

22 (e) "Mitigation banking agreement" means a written agreement  
23 between the department and a banking partner that satisfies the  
24 incidental take requirements of subdivision (b) of Section 2081  
25 and that provides a uniform procedure and contribution from each  
26 banking partner for receiving mitigation bank credits.

27 (f) "Program" means the Delta Smelt Hatchery Program  
28 developed by the department pursuant to Section 1712.

29 (g) "Refugia" means a captive Delta smelt broodstock population  
30 managed to maintain a genetic population representative of the  
31 wild population.

32 1712. The department shall develop the Delta Smelt Hatchery  
33 Program to preserve and restore the Delta smelt. The program shall  
34 be implemented by January 1, 2018, and shall do all of the  
35 following:

36 (a) Design a propagation facility for the following intended  
37 purposes:

38 (1) Establishing a genetic refugia population.

39 (2) Developing broodstock for scientific and educational  
40 purposes.

1 (3) Providing a source of fish for supplementation of wild  
2 populations.

3 (b) Identify three potential sites within, or immediately adjacent  
4 to, the delta that are suitable for the design, construction, and  
5 operation of a Delta smelt hatchery.

6 (c) Result in the design and construction of at least one Delta  
7 smelt hatchery on a site identified under subdivision (b) by January  
8 1, 2019.

9 (d) Develop a hatchery management plan that identifies hatchery  
10 management and implementation strategies to ensure the success  
11 of the program in meeting its goals. The Hatchery Management  
12 Plan shall be developed in consultation with the University of  
13 California and the United States Fish and Wildlife Service, and  
14 other mediums for scientific peer review, as deemed appropriate  
15 by the department.

16 (e) Establish and operate a mitigation bank available to banking  
17 partners in order to provide take authorization pursuant to Section  
18 2081 to participating banking partners.

19 (f) Adopt guidelines that establish the procedures for entering  
20 into a mitigation banking agreement and the cost of participation  
21 in the mitigation bank.

22 1713. The department shall enter into mitigation banking  
23 agreements with banking partners for the purpose of providing  
24 take authorization under Section 2081. Mitigation banking  
25 agreements shall meet both of the following requirements:

26 (a) Establish a requirement for the banking partner to participate  
27 in the mitigation bank at a level that is roughly proportional to the  
28 impact of the banking partner's activity on Delta smelt.

29 (b) Set the financial contribution of the banking partner, together  
30 with a method of making financial contributions to the mitigation  
31 bank, that provide sufficient certainty that financing is available  
32 for that banking partner's share of the annual operations of the  
33 Delta smelt hatchery in an amount sufficient to satisfy the  
34 mitigation obligation of the banking partner under the permit issued  
35 pursuant to Section 1714.

36 1714. If the department enters into a mitigation banking  
37 agreement that satisfies all of the requirements of this chapter, the  
38 department shall issue a permit authorizing an incidental take under  
39 Section 2081 to participating banking partners.

1 1715. Delta smelt reared for refugia populations, scientific  
2 research, and population augmentation shall be counted towards  
3 mitigation credits. Hatchery production in excess of the obligations  
4 of mitigation banking partners shall create mitigation credits  
5 available to meet the obligations of future activities. Banking  
6 credits shall be available to banking partners to satisfy mitigation  
7 obligations required under the federal Endangered Species Act,  
8 consistent with a mitigation plan approved by the United States  
9 Fish and Wildlife Service.

10 1716. Funding necessary for the long-term operation and  
11 maintenance of the program and a Delta smelt hatchery shall be  
12 provided from revenues received from banking partners. Funds  
13 provided through banking agreements shall be dedicated to program  
14 implementation and not used for other purposes.

15 1717. Costs for the planning, design, and construction of a  
16 Delta smelt hatchery, including purchase of any necessary lands,  
17 easements, or rights-of-way shall be made from funds allocated  
18 pursuant to Section 1718. An audit of all funds received for the  
19 program shall be conducted every three years.

20 1718. The sum of dollars (\$\_\_\_\_) is hereby appropriated from  
21 \_\_\_\_ to the department for expenditure without regard to fiscal  
22 year, for purposes of implementing this chapter.

23 1719. The department may contract with public agencies  
24 outside of state government for the planning, design, construction,  
25 and operation of one or more Delta smelt hatcheries.

26 1720. The department may partner with the United States Fish  
27 and Wildlife Service in establishing and operating a Delta smelt  
28 hatchery, provided that all requirements of this chapter shall be  
29 complied with.

30 1721. The department shall cooperate on the development of  
31 long-term comprehensive Delta ecosystem solutions to ensure  
32 consistency with this chapter. A program implemented pursuant  
33 to Section 1712 shall be included as one of the actions incorporated  
34 into any state-adopted comprehensive Delta ecosystem program.

35 1722. Nothing in this chapter shall diminish the protections  
36 provided to Delta smelt under state law, provide for illegal taking  
37 of Delta smelt, or eliminate the requirements for compliance with  
38 the California Endangered Species Act.

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